

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

DOCKET NO. 031033-EI  
IN RE: TAMPA ELECTRIC COMPANY'S  
2004-2008 WATERBORNE TRANSPORTATION  
CONTRACT WITH TECO TRANSPORT AND  
ASSOCIATED BENCHMARK

REBUTTAL TESTIMONY AND EXHIBIT  
OF

Frederick J. Murrell  
ON BEHALF OF  
TAMPA ELECTRIC COMPANY

REDACTED VERSION

DOCUMENT NUMBER 0719

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FPSC-COMMISSION CLERK

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2   PREPARED REBUTTAL TESTIMONY

3   OF

4   FREDERICK J. MURRELL

5   ON BEHALF OF

6   TAMPA ELECTRIC COMPANY

7  
8   **Q.**   Please state your name and business address.

9  
10 **A.**   My name is Frederick J. Murrell. I am President of the  
11       law firm of Frederick J. Murrell, Professional  
12       Association, at 1401 Manatee Avenue West, Suite 910,  
13       Bradenton, Florida 34205.

14  
15 **Q.**   Please describe your educational background and business  
16       experience.

17  
18 **A.**   I have prepared Exhibit FJM-1, Document No. 1, which  
19       describes my education and experience. By way of summary,  
20       I received a Bachelor of Science degree in economics and  
21       political science from Florida State University in 1972.  
22       In 1976, I received the degree of Juris Doctor (with  
23       honors) from the University of Florida.

24  
25       Upon graduation from law school, I took a position with

1 the law firm of Womble, Carlyle, Sandridge & Rice of  
2 Winston-Salem, North Carolina.

3  
4 In 1979, I accepted a position in the law department of  
5 Florida Power Corporation in St. Petersburg, Florida,  
6 where I was assigned to assist Electric Fuels  
7 Corporation, which was then a wholly-owned subsidiary of  
8 Florida Power, charged with the responsibility of  
9 procuring coal and coal transportation for Florida  
10 Power's coal-fired plants. In 1981, I moved to Electric  
11 Fuels in a business position, and soon became the  
12 Director of coal procurement and later Vice President in  
13 charge of coal procurement. I held that position until I  
14 left the company in August of 1984, purchasing coal and  
15 coal transportation for about 4.5 million tons of coal  
16 per year.

17  
18 In 1984, I accepted the position of Assistant Vice  
19 President in the Coal Traffic Department of the Seaboard  
20 System Railroad, which became a part of CSX  
21 Transportation, Inc. ("CSXT"), when the Chesapeake & Ohio  
22 Railroad and the Seaboard merged. I soon became Vice  
23 President of the Coal Traffic Department, and was  
24 responsible for CSXT's coal movements in the traditional  
25 Seaboard coal fields, as well as movements of coal by

1 CSXT to the inland waterway system. The transportation  
2 revenue of my department was approximately \$800 million  
3 per year.

4  
5 In 1986, CSXT suggested I transfer to Baltimore,  
6 Maryland, and I declined to relocate there. I took early  
7 retirement from CSXT at that time, and re-entered the  
8 practice of law in Lakeland, Florida. I moved soon  
9 thereafter to Bradenton, Florida, where I opened a  
10 practice that specialized in coal procurement and coal  
11 transportation matters. Over the years, I have  
12 represented numerous electric power producers, public  
13 service commission staff, interveners, coal companies,  
14 and coal transportation companies.

15  
16 In 1992, I established Adaro Envirocoal Americas to  
17 represent the coal production of PT Adaro Indonesia, the  
18 producer of low sulfur coal called "Envirocoal." My  
19 company is responsible for the sale of that coal into  
20 North, Central and South America, parts of the  
21 Philippines and a power plant in Indonesia. Additionally,  
22 I have been involved in coal production and coal imports  
23 in the country of Chile, and am part owner of coal mining  
24 and synthetic fuel from coal operations in Indiana,  
25 Illinois, West Virginia and Kentucky.

1 Q. What is the purpose of your testimony in this proceeding?

2

3 A. The primary purpose of my testimony is to rebut certain  
4 aspects of CSXT's testimony provided by Dr. Robert  
5 Sansom, John Stamberg, and Robert White. I have been  
6 asked by Tampa Electric to review the solicitation by  
7 Tampa Electric for waterborne coal transportation  
8 services and render an opinion on whether the  
9 solicitation was performed in a reasonable and  
10 professional manner. I have also been asked to provide  
11 an opinion regarding the reasonableness of Tampa  
12 Electric's projected coal transportation costs for 2004  
13 through 2008, especially when compared to CSXT's two  
14 proposals. Finally, I have been asked to review whether  
15 the Commission should modify or eliminate the waterborne  
16 coal transportation benchmark that was established for  
17 Tampa Electric in 1988.

18

19 Q. Have you prepared an exhibit to your testimony?

20

21 A. Yes I have. Exhibit FJM-1 contains three documents.  
22 Document No. 1 is my resume, Document No. 2 is entitled,  
23 "Articles about CSXT Rate Increases" and Document No. 3  
24 is entitled "Comparison of Rail and Waterborne Adjustment  
25 Factors."

1 the Tampa Electric's delivery system is that its services  
2 are provided by a reliable and sound entity. The non-  
3 price value of this reliable and efficient transportation  
4 system is significant, particularly given the reliability  
5 concerns unique to Tampa Electric.

6  
7 Although there have been questions raised about the  
8 appropriateness of the benchmark established by the  
9 Florida Public Service Commission ("FPSC" or  
10 "Commission") in 1988, I have seen no evidence which  
11 reasonably supports a modification of the benchmark. The  
12 benchmark seems to have worked well and the fundamental  
13 conditions that are in place today are not substantially  
14 different from those present in 1988, when the Commission  
15 carefully considered and adopted the current benchmark  
16 for waterborne coal transportation costs. It is my  
17 understanding that the Commission each year since 1988  
18 confirmed the reasonableness of the prices paid by Tampa  
19 Electric to TECO Transport as being below the market-  
20 based benchmark. The new contract which went into effect  
21 January 1, 2004 provides for lower prices than the prices  
22 charged under the old contract.

23  
24 Q. What is your general view of CSXT's involvement in this  
25 proceeding?

1 A. After reviewing CSXT's testimony, it is clear that CSXT  
2 is attempting to misuse this proceeding as a means of  
3 marketing its virtually unregulated rail transportation  
4 service. From my perspective and experience, CSXT is  
5 asking this Commission to help it put a foot in the door  
6 to establish new business in Florida. After reviewing  
7 their proposals, there is no doubt that Tampa Electric  
8 was prudent in entering its contract with TECO Transport  
9 for the delivery of coal to Tampa over the next five  
10 years.

11

12 **COAL TRANSPORTATION SOLICITATION**

13 Q. Do you have personal experience with a coal  
14 transportation system?

15

16 A. Yes, I do have experience with coal transportation. While  
17 I was responsible for coal procurement for Florida Power  
18 Corporation at Electric Fuels Corporation, the water  
19 transportation system was similar, in many ways, to Tampa  
20 Electric's. During my tenure, the company did not have a  
21 river barge company, although one was acquired by  
22 Electric Fuels after my departure. Instead of using the  
23 TECO Bulk Terminal known as Electro-Coal Transfer at that  
24 time, Electric Fuels used International Marine Terminal  
25 ("IMT"), which is just across the Mississippi River from

1           TECO Bulk Terminal. Electric Fuels' ocean freight  
2           contractor was Dixie Fuels, which used vessels of a  
3           similar configuration to those used by TECO Transport in  
4           its TECO Ocean Shipping fleet. The vessels were  
5           integrated tug/barges, such as those operated by TECO  
6           Transport, but were smaller, having a draft of less than  
7           20 feet, to accommodate the shallow entry channel at  
8           Florida Power's Crystal River plants.

9  
10           During my tenure at Electric Fuels, I was involved in the  
11           solicitation for transportation services and the  
12           evaluation of the responses to the solicitations.  
13           Additionally, since leaving Electric Fuels I have  
14           consulted for other companies who use waterborne and rail  
15           transportation to receive coal at their coal-fired  
16           facilities.

17  
18           **Q.** Have you reviewed Tampa Electric's June 27, 2003 Request  
19           for Proposal ("RFP"), the responses that were received,  
20           Tampa Electric's analysis of the bid responses and the  
21           coal transportation contract entered into by Tampa  
22           Electric with TECO Transport?

23  
24           **A.** Yes, I have.  
25



1 Q. Did Tampa Electric administer its recent coal  
2 transportation solicitation in a reasonable and  
3 professional manner?

4  
5 A. Yes, it did. First, let me point out that Tampa Electric  
6 was under no requirement to bid the services. This  
7 Commission, in its 1988 original benchmark order, states  
8 clearly that Tampa Electric can enter into a contract for  
9 its freight requirements in any manner it deems  
10 appropriate and specifically recognized that affiliate  
11 contracts are not normally bid. Nevertheless, Tampa  
12 Electric issued its bid solicitation in a reasonable and  
13 professional manner to help provide an indication of the  
14 market for coal transportation and to help establish an  
15 appropriate market based rate for transportation.

16  
17 Notwithstanding the fact that Tampa Electric was not  
18 required to bid for transportation services, it is my  
19 opinion that the waterborne coal transportation services  
20 solicitation was designed, issued and evaluated in a  
21 manner that was completely consistent with sound and  
22 acceptable business practices in the industry. The result  
23 of the solicitation and evaluation by Tampa Electric's  
24 staff was sufficient in all regards and provided  
25 important and reliable information regarding the status

1 of the marketplace for waterborne coal transportation.  
2 The contract entered into with TECO Transport for 2004  
3 through 2008 reflects a reasonable price for those  
4 services.

5

6 **Q.** Did Tampa Electric handle the solicitation in a manner in  
7 keeping with industry standards?

8

9 **A.** Yes, Tampa Electric's actions during the solicitation  
10 process were entirely appropriate, and did not deviate  
11 from the industry standard for seeking bid responses from  
12 the market. Tampa Electric's obligations were to prepare  
13 a bid solicitation package that was understandable,  
14 present it to the members of the market that could  
15 provide responses and provide potential respondents with  
16 sufficient time to submit their bids.

17

18 **Q.** Was Tampa Electric's competitive bid process conducted  
19 with enough time before the expiration of Tampa  
20 Electric's water transportation contract with TECO  
21 Transport?

22

23 **A.** Yes. Tampa Electric conducted its solicitation a full  
24 six months prior to the expiration of its contract for  
25 affreightment of waterborne coal. This allowed more than

1 sufficient time to send out the solicitation, provide a  
2 reasonable period to respond, negotiate with the winners  
3 selected and enter into the required contracts. While  
4 there may be instances where other utilities have allowed  
5 longer periods for accomplishing this, I believe that  
6 most coal-burning companies conduct their solicitations  
7 with less time. The suggestion that six months was  
8 insufficient time to conduct this solicitation is simply  
9 without merit. In fact, my experience in the coal and  
10 coal transportation markets has taught me that most  
11 solicitations are issued with less than six months prior  
12 to the expiration of the contract that is being replaced.

13

14 **Q.** Did Tampa Electric's RFP allow enough time for potential  
15 bidders to learn about the opportunity and respond to the  
16 RFP?

17

18 **A.** Yes, it did provide sufficient time. Tampa Electric  
19 allowed about five weeks for potential bidders to learn  
20 about the bid opportunity, construct the bid response and  
21 submit it to Tampa Electric's offices. That is sufficient  
22 time to respond to the RFP in a studied and responsible  
23 manner and did not provide a burden for the potential  
24 bidders. Additionally, Tampa Electric went to pains to  
25 identify potential bidders and ensure that each potential

1 bidder received a bid package. For the most part, the  
2 potential bidders are large corporations who are quite  
3 familiar with the requirements of analyzing and  
4 responding to bid solicitations from companies such as  
5 Tampa Electric, and the time allowed would be entirely  
6 sufficient for such companies to determine whether and at  
7 what level they would price the potential business. In a  
8 recent solicitation for transportation services, First  
9 Energy allowed about the same amount of time for  
10 responses as Tampa Electric did. In AEP's and Southern's  
11 recent solicitations, they allowed only 25 days and 28  
12 days, respectively.

13  
14 **Q.** In your opinion, should CSXT have been provided with a  
15 copy of the RFP, as asserted by CSXT's witness Sansom and  
16 OPC/FIPUG's witnesses Wells and Majoros?

17  
18 **A.** No, for two basic reasons. First, there are no rail  
19 receiving facilities at the Big Bend and Polk Power  
20 stations capable of receiving rail shipments of coal.  
21 Based on that fact alone, it appears that the inclusion  
22 of railroads in the bidding process was not needed or  
23 appropriate. Second, because Tampa Electric may be  
24 required to dramatically alter the number of tons of coal  
25 it can ultimately burn based upon its environmental

1 agreements with the EPA and DEP, adding rail receiving  
2 facilities, with their high capital costs and potentially  
3 burdensome contractual commitments, made no sense.

4

5 **Q.** Should Tampa Electric have contacted non-responsive  
6 companies to encourage their response?

7

8 **A.** No. Based on my experience, such an action is not in  
9 keeping with normal bid solicitation practices of most  
10 electric generating companies in the United States.

11

12 **Q.** Did Tampa Electric create an ineffective bid package when  
13 it stated that Tampa Electric preferred integrated  
14 proposals?

15

16 **A.** No. I don't believe that any company misread Tampa  
17 Electric's RFP statement that it "prefers proposals for  
18 integrated waterborne transportation services." The bid  
19 package went on to state "however, proposals for  
20 segmented services will be considered." It is logical to  
21 prefer integrated proposals. When I was responsible for  
22 coal transportation at Electric Fuels, our transportation  
23 services were not performed in an integrated manner and I  
24 was constantly faced with transportation subcontractors  
25 pointing the finger at each other when problems arose

1 that caused costs to increase. An integrated proposal  
2 removes this problem and allows the staff at the utility  
3 to deal with one point of contact for contract  
4 administration. On the other hand, by stating clearly  
5 that Tampa Electric would consider and evaluate proposals  
6 for less than the full-integrated package, Tampa Electric  
7 encouraged offers for less than the full package of  
8 services. Additionally, by stating that segmented  
9 services proposals would be evaluated, it clearly  
10 reflected the intent of Tampa Electric to evaluate total  
11 delivered economics to put together the combination of  
12 services that resulted in the lowest cost for  
13 transportation.

14  
15 **Q.** Based upon your experience, is a right of first refusal  
16 clause common for these types of transportation  
17 contracts?

18  
19 **A.** Such a clause is common. Special conditions can make  
20 such a clause entirely appropriate. In this instance,  
21 TECO Transport had developed a large quantity of  
22 dedicated transportation assets almost entirely to serve  
23 Tampa Electric's coal delivery requirements. Based on  
24 this reliance upon that particular business, it is not  
25 inappropriate for a company in that position to have a

1 right of first refusal or "last look" provision.

2

3 **Q.** In your opinion, should TECO Transport have been required  
4 to submit a bid along with the other bidders?

5

6 **A.** No, I do not believe that should have been required given  
7 that TECO Transport had a right of first refusal. This  
8 Commission, in its previous order, indicated that Tampa  
9 Electric and TECO Transport should negotiate a contract  
10 price for transportation services, provided that the  
11 contract price does not exceed the benchmark pricing.  
12 However, Tampa Electric is not required to call upon TECO  
13 Transport to set the market.

14

15 **Q.** The residential customers' witness Hochstein suggests  
16 that the range of volume included in the RFP was not  
17 standard. What is your view of this assessment?

18

19 **A.** First, it is not at all uncommon for there to be a broad  
20 range of volume in both coal and transportation  
21 solicitations. This provides the utility with flexibility  
22 when deciding how best to meet its procurement and  
23 transportation needs. However, more importantly, the  
24 broad range of tonnage described in the Tampa Electric  
25 RFP is consistent with the consent decrees with

1 environmental regulators, and simply recognizes the  
2 potential variations in the volumes of coal to be used at  
3 the Big Bend Station.  
4

5 **Q.** Dr. Hochstein also states that the demurrage requirement  
6 in the RFP was not industry standard and was not  
7 reasonable. Do you agree?  
8

9 **A.** I was quite surprised by Dr. Hochstein's assertion that  
10 the demurrage requirement in the RFP was not a standard  
11 provision. Perhaps this is explained by his admission at  
12 his deposition that he has never had experience in  
13 preparing or reviewing an RFP for either rail or  
14 waterborne transportation services. (See Hochstein  
15 Deposition, Volume 1, page 16, line 1.) I have seen that  
16 same provision in many solicitations in various parts of  
17 the world, and believe that it is both common and  
18 standard. It is not unreasonable for the purchaser to  
19 require that the carrier and the intermediate  
20 transloading facility work out issues related to  
21 demurrage. In fact, it would be quite unusual for the  
22 buyer to agree to be the responsible intermediary between  
23 the carrier and the transloading facility. I don't think  
24 I have ever seen this in the marketplace. The fact that  
25 ■■■ accepted the provision without objection indicates



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that the provision is not peculiar.

**Q.** Dr. Hochstein states that the "storage volume requirement" and the requirement for eight separate storage piles in the RFP were not in keeping with industry standards and were not reasonable. Do you agree?

**A.** No, I do not agree with his assertion. The first point I would like to make is that this is the level of service that Tampa Electric currently receives at TECO Bulk Terminal. Therefore, it is entirely appropriate for Tampa Electric to seek the same level of service out of bidders. Second, the bid received by Tampa Electric from [REDACTED] did not object to these requirements, and that is evidence that the provisions in the RFP were acceptable.

**Q.** Dr. Hochstein states that the RFP weight measurements were not standard or reasonable. Do you agree?

**A.** No, I do not agree with this position, and his statement may reflect on his lack of experience in the industry. This requirement is similar to what is imposed by Cincinnati Gas & Electric, American Electric Power, and some of the Southern Company divisions. It is subject to negotiation, but the stated preference of Tampa Electric

1 regarding the setting of controlling weights is entirely  
2 within standard industry practice.  
3

4 Q. Dr. Hochstein states that the "cargo loss requirement"  
5 and the "no-cost expedition of shipment" in the RFP were  
6 not industry standard and were unreasonable. Do you  
7 agree?  
8

9 A. No, I do not. The provisions requested by Tampa Electric  
10 reflect the level of service that Tampa Electric was  
11 receiving from TECO Bulk Terminal and it is entirely  
12 appropriate to seek this level of service from other  
13 entities bidding on the business. These issues are  
14 subject to negotiation, but the inclusion of these  
15 provisions in the solicitation was well within industry  
16 standard practice. Specifically, regarding the "no-cost  
17 expedition of shipment" requirement, it is important to  
18 remember that Tampa Electric, as a Florida-based coal  
19 burning utility, is positioned far from the coalfields.  
20 The provision in question simply recognizes this risk  
21 factor faced by Tampa Electric and shifts that risk to  
22 the carrier.  
23

24 **ANALYSIS OF CSXT'S PROPOSALS AND ALLEGATIONS**

25 Q. Based upon your experiences working for a regulated

1 utility that procured rail and waterborne transportation  
2 services and your experiences working for CSXT, how does  
3 the existence of a viable water transportation system  
4 affect the rates offered by bulk commodity transportation  
5 services like rail carriers in the United States?  
6

7 **A.** It has been my experience that a rail carrier, such as  
8 CSXT, will offer its lowest rates when it is attempting  
9 to secure business from a coal user that also has a water  
10 transportation system. Where there is no water  
11 transportation system in place, the rail rates tend to be  
12 the highest. I have observed that companies without  
13 effective water transportation alternatives have  
14 experienced dramatically increased rail transportation  
15 costs. This is no more evident than in the recent Duke  
16 Energy and Carolina Power & Light cases before the  
17 Surface Transportation Board ("STB"), a railroad  
18 favorable board. In those cases, which were brought by  
19 the utilities against the Norfolk Southern and CSXT  
20 railroads, the utilities charged that their existing  
21 contract rail rates were too high and not competitive.  
22 Most of the generating stations for these utilities are  
23 basically rail captive, with no access or ability to  
24 receive waterborne deliveries of coal. As a result of  
25 the challenge to their high rail rates, the STB ruled in

1 favor of both of the railroads and the resulting rates  
2 for the utilities have increased by as much as 50% over  
3 their previous contract rates. I have included an  
4 article about this along with two other articles about  
5 similar issues in Document No. 2, "Articles about CSXT  
6 Rate Increases," of my exhibit.

7  
8 It is vital for Tampa Electric to continue to use coal  
9 suppliers where it can maintain a water transportation  
10 alternative so that the railroads are not in a position  
11 to increase rates, as they do when dealing with captive  
12 rail receivers. Tampa Electric also needs to maintain a  
13 strong waterborne coal alternative to permit Tampa  
14 Electric to accept foreign coal, if needed. Colombian and  
15 Venezuelan coals, in particular, offer alternatives in  
16 limited quantities for Tampa Electric in times when  
17 domestic coals may experience price increases. The  
18 amounts of purchases from foreign sources of coal must be  
19 governed by the limits of coal with chemical properties  
20 that can be successfully burned in Tampa Electric's  
21 boilers, the potential shortage of the commodity, the  
22 origin of the commodity and the practical or viable means  
23 of transportation.

24  
25 Q. Is there a market for coal transportation?

1 A. Absolutely. This is evidenced by the number of  
2 waterborne transportation providers who received Tampa  
3 Electric's RFP along with CSXT's rail proposals. These  
4 providers include Dixie Carriers, Moran Towing, American  
5 Steamship, Central Gulf Lines, Kirby, Matson Navigation,  
6 and Express Marine. Other belted-unloading vessels  
7 available from various carriers who commonly transport  
8 coal from South America to American ports also  
9 participate in US Gulf markets. Of course, some of these  
10 vessels are not Jones Act qualified and cannot move  
11 between two US ports. However, the presence of these  
12 vessels to service the US market helps to establish the  
13 market conditions that affect buyers of coal in today's  
14 market.

15  
16 Q. Have you reviewed the proposals submitted by CSXT?

17  
18 A. Yes, I have. I found CSXT's rate proposals to contain  
19 aggressive rail rates for the services offered. The  
20 rates are at cost per mile levels below those which are  
21 in place for captive rail customers CSXT has in Florida.  
22 I have also reviewed the work of Sargent & Lundy ("S&L")  
23 assessing the likely cost of building rail service into  
24 the Big Bend Station. The Commission should acknowledge  
25 the CSXT proposals for what they are - an artificially

1 low bid aimed at displacing waterborne transportation  
2 with the ultimate goal of pricing rail service at higher  
3 levels later. The Commission should not penalize the  
4 company by disallowing any portions of the amounts it is  
5 paying to TECO Transport for transportation services  
6 based on the CSXT proposals.  
7

8 **Q.** What is your general assessment of the proposals  
9 submitted by CSXT?  
10

11 **A.** The CSXT offers fail to take into consideration several  
12 significant factors which Tampa Electric must consider in  
13 evaluating the rail alternative in the market. For one,  
14 the offers ignore the costs that some of the origin coal  
15 producers selling coal to Tampa Electric would incur in  
16 getting their coal to a rail facility for movement to  
17 Tampa Electric. Also, I concur with S&L's Ms. Guletsky's  
18 testimony that CSXT has significantly understated the  
19 time required to secure environmental and engineering  
20 permits to construct the facilities and the time to  
21 construct the facilities. In short, the prices being  
22 charged to Tampa Electric for water transportation by  
23 TECO Transport are below the charges contained in the  
24 CSXT rail bid, when proper adjustments are made to the  
25 bid to reflect the full cost of the movement.

1 Q. If Tampa Electric were to incur the costs associated with  
2 terminating its existing coal supply and coal  
3 transportation contractual obligations and move to the  
4 alternative coal mining and coal transportation suppliers  
5 suggested by Dr. Sansom, would Tampa Electric likely  
6 become a captive customer of the railroad for that  
7 portion of its coal supply requirements?

8  
9 A. Yes. First of all, it would incur liquidated damages  
10 and dead freight charges under existing coal supply and  
11 transportation agreements, which would be significant,  
12 according to Ms. Wehle. Second, it would damage its  
13 relationships with its contractual partners and undermine  
14 its ability to secure its coal supply. Perhaps most  
15 importantly, it would subject itself to CSXT's own  
16 desires for an enhanced revenue stream, leveraged through  
17 rail rate increases unregulated by this Commission.

18  
19 Q. How have you reached your conclusion that the CSXT  
20 proposed rates are at levels below those which you  
21 believe are in place for captive rail customers CSXT has  
22 in Florida? Wouldn't that benefit Tampa Electric's  
23 customers?

24  
25 A. Based on the data available today, the rates that CSXT

1 proposed to Tampa Electric are lower than those generally  
2 provided to other customers in the Florida peninsula. I  
3 have taken a couple of points for comparison of the CSXT  
4 rates proposed for Tampa Electric and contrasted them  
5 with the average rate levels charged to other Florida  
6 customers. I have also reviewed Tampa Electric's most  
7 recent benchmark filing made with the Florida Public  
8 Service Commission that shows the average actual rates  
9 for the cities of Lakeland, Jacksonville, Gainesville and  
10 Orlando. Based on a "cents per ton mile" comparison  
11 using the 2002 rates for other Florida shippers, the CSXT  
12 rates offered to Tampa Electric appear to be about █%  
13 below the level offered to Lakeland Electric, from █% to  
14 █% below the rates provided to Gainesville Regional  
15 Utilities, around the same █% to █% below the rates of  
16 Orlando Utilities Commission and nearly █% below the  
17 rates used by Jacksonville Electric Authority.

18  
19 Although CSXT has offered Tampa Electric lower rates,  
20 this could be good news for Tampa Electric and its  
21 customers initially, but CSXT would likely increase rates  
22 in the future to approach the rates charged to other  
23 customers. I would expect that after the initial  
24 contract period, rates would increase.  
25



1 Q. How do you think CSXT will impose rate increases?

2

3 A. First, since the contract would have taken effect on  
4 January 1, 2004, I believe that CSXT realizes that the  
5 rates it offered Tampa Electric would not be usable for a  
6 period of about two years. This is because during the  
7 first two years of the proposed contract, Tampa Electric  
8 would be involved in securing permits and performing the  
9 actual construction of the rail receiving facilities,  
10 which currently do not exist. Even though no coal could  
11 be delivered during this period, the contract puts Tampa  
12 Electric at risk for approximately [REDACTED] in dead  
13 freight charges from CSXT for tonnage that was required  
14 to be shipped under the contract, but could not be  
15 shipped. Therefore, the aggressive rates offered by CSXT  
16 to Tampa Electric would only be available to Tampa  
17 Electric for the last three years before the utility  
18 faced the threat of a dramatic increase in rates upon  
19 expiration of the contract with CSXT.

20

21 Q. What would you expect CSXT to propose at the end of the  
22 initial contract period?

23

24 A. I would expect CSXT to dramatically increase its rates  
25 over the most recent rates offered to Tampa Electric. I

1 base this on the fact that the rates to other Florida  
2 customers are higher than the proposed Tampa Electric  
3 rates and on the fact that CSXT and its competitor,  
4 Norfolk Southern, are increasing their rates on customers  
5 in other parts of the eastern United States, including to  
6 their customers Duke Energy and Carolina Power & Light  
7 Company.

8  
9 **Q.** Wouldn't that put CSXT at risk of having Tampa Electric  
10 terminate the contract after five years after CSXT  
11 invested in rail receiving facilities at Tampa Electric's  
12 power plants?

13  
14 **A.** Probably not. CSXT's proposal to Tampa Electric was  
15 unclear regarding how it would pay for the required rail  
16 receiving facilities at the Big Bend and Polk Power  
17 stations. It has been my experience that CSXT doesn't  
18 actually advance the cash to a shipper for the  
19 construction of rail facilities. Almost without  
20 exception, it is the shipper's responsibility to  
21 construct and pay for the facilities up front. CSXT then  
22 allows the shipper to take a reduction or credit on a per  
23 car basis of \$10 to \$25 per car, until the capital  
24 expended for construction of the new facilities is  
25 recovered. In such a case, it would be essential for

1 Tampa Electric to haul a substantial amount of coal by  
2 rail for a lengthy period in order to get its money back.  
3 If you assume that Tampa Electric could get a "refund" of  
4 \$100 per rail car, a rate I have never seen, and Tampa  
5 Electric shipped about 2.5 million tons per year, then it  
6 would take Tampa Electric over 12 years to get its money  
7 back. At 1.5 million tons of rail shipments per year, it  
8 would take about 20 years to recover the funds spent to  
9 build rail receiving facilities.

10  
11 **Q.** Would this present any risk to Tampa Electric?

12  
13 **A.** Yes, it would present very significant risks. As I have  
14 said before, I believe that CSXT can be depended upon to  
15 dramatically increase its rail rates, as it has done with  
16 other customers. If Tampa Electric spent its own money to  
17 construct the rail receiving facilities and then CSXT  
18 increased its rates at the expiration of a current  
19 contract, as I predict it will, then Tampa Electric would  
20 have to choose between paying higher rates for  
21 transportation and failing to recover the capital costs  
22 it paid for the new rail receiving facilities.

23  
24 **Q.** Are there risks to Tampa Electric for dead freight that  
25 concern you?

1 A. Yes, there are. CSXT's proposal requires Tampa Electric  
2 to purchase coal from CSXT direct-origin mines - that is,  
3 mines where CSXT is the originating carrier - at the rate  
4 of a minimum of one million tons per year. The failure by  
5 Tampa Electric to meet this minimum would subject Tampa  
6 Electric to dead freight charges. This is important  
7 because of the need of Tampa Electric to purchase low ash  
8 fusion temperature coals for its Big Bend Station. While  
9 CSXT directly serves a large number of coal mines, most  
10 of those mines produce coal with ash fusion temperatures  
11 that exceed Tampa Electric's specifications. There are  
12 few direct rail served mines with low ash fusion  
13 temperature coal. This puts Tampa Electric at risk by  
14 having to 1) buy unsuitable coal from origins offering  
15 high ash fusion coal or 2) be forced to buy one million  
16 tons from a few mines or 3) pay CSXT for dead freight at  
17 the rate of over [REDACTED] dollars per ton of coal for the  
18 number of tons less than one million that it originates  
19 at CSXT origins. This problem is exacerbated when one  
20 considers that Tampa Electric uses a substantial amount  
21 of petroleum coke at its Polk Station. I know of no  
22 acceptable petcoke source that is located on CSXT. The  
23 fact that CSXT's offer does not include rail rates for  
24 this important fuel source increases the probability of  
25 incurring dead freight charges.

1 Q. Based upon your experiences with CSXT, what impacts are  
2 there to CSXT's proposal that depend on Tampa Electric's  
3 decision regarding the Big Bend Station?  
4

5 A. There is no detail offered by CSXT regarding what happens  
6 in the event that Tampa Electric reduces its coal burn at  
7 Big Bend Station to comply with its agreements with the  
8 U.S. Environmental Protection Agency and the Florida  
9 Department of Environmental Protection. The devil is in  
10 the details, and the contract that would ultimately be  
11 offered by CSXT would likely contain "claw-back"  
12 provisions to recover the capital dollars expended, if  
13 paid for by CSXT, in the event that Tampa Electric  
14 reduces its coal burn at Big Bend. In fact, as I  
15 mentioned before, the railroad usually requires that the  
16 shipper, in this instance Tampa Electric, pay the capital  
17 costs up front and recover the capital expenditures on a  
18 per car basis. If Tampa Electric is precluded from  
19 burning significant quantities of rail coal due to  
20 environmental issues, the ability for Tampa Electric to  
21 recover its capital would be over an even longer period  
22 of time for it to recover its initial investment.  
23

24 Q. Do you have any concern about the demurrage provision in  
25 the CSXT offer?

1 **A.** Yes, most definitely. Demurrage is a charge assessed for  
2 delay of rail equipment in discharging its freight at the  
3 destination. Based CSXT's proposed four hour unloading  
4 time in the demurrage clause, it appears that Tampa  
5 Electric would be in a penalty situation every time it  
6 received a train at Big Bend Station. Based on S&L's  
7 study, it will take more like six hours, not four to  
8 unload a train. Even the information provided by CSXT  
9 seems to suggest that the receiving facility could not  
10 unload a train during a four hour period. Because of  
11 this, Tampa Electric would face train demurrage charges  
12 each time a train was unloaded at its power plants.  
13 Tampa Electric must be concerned about these added costs.

14  
15 **Q.** Have you reviewed Ms. Wehle's estimate of additional  
16 demurrage charges under the CSXT bid?

17  
18 **A.** Yes. Ms. Wehle's estimates indicate that demurrage will  
19 cost about [REDACTED] cents a ton or up to \$ [REDACTED] per year.  
20 Her estimates are very conservative in my view.

21  
22 **Q.** What is the rail cost adjustment factor that CSXT  
23 includes in its proposal and what is your concern about  
24 it compared to the escalators in the TECO Transport  
25 contract with Tampa Electric?

1 A. The rail cost adjustment factor ("RCAF") is an index of  
2 changes in railroad costs. The index accounts for fuel,  
3 materials and supplies, equipment rents, purchased  
4 services, depreciation, interest, taxes other than income  
5 and payroll taxes, and other expenses. The CSXT proposal  
6 includes a RCAF-U which means it is the RCAF without a  
7 productivity adjustment that reduces the adjustment.  
8 Therefore, the RCAF-U adjustment is always more than the  
9 RCAF adjustment. The escalator is applied quarterly to  
10 all transportation costs.

11  
12 TECO Transport's contract with Tampa Electric also  
13 includes adjustment factors but they are based on the  
14 Consumer Price Index ("CPI") and the Producer Price Index  
15 ("PPI"). Their index is also applied quarterly but only  
16 on the variable costs for the river and gulf segments.

17  
18 My concern when comparing the two factors is that the  
19 RCAF raises rates at a more significant rate than CPI and  
20 PPI. In comparing the two, I took the TECO Transport-  
21 Tampa Electric contract rate in 1999 (the start of the  
22 last contract) and I assumed a same rail rate also  
23 starting in 1999. I applied the RCAF-U to rail and the  
24 CPI and PPI to water. By the end of the contract period,  
25 the rail rate was \$1.59 higher than the water rate. Over

1 this five year period, the rail escalator grew 12.7%  
2 while the water escalator only effectively grew 3.8%  
3 since it is only applied to the variable components in  
4 the TECO Transport contract. Therefore, when comparing  
5 coal transportation rates, Tampa Electric needed to  
6 consider not only the beginning rate, but also the  
7 expected rate at the end of the contract period. I have  
8 summarized my comparison in Document No. 3 of my exhibit  
9 entitled "Comparison of Rail and Waterborne Adjustment  
10 Factors"

11  
12 **Q.** Please address Dr. Sansom's criticism that Tampa Electric  
13 did not take CSXT'S bid seriously.

14  
15 **A.** That criticism is not well founded. Because of the  
16 problems I have discussed regarding CSXT's rate  
17 proposals, it was not appropriate for Tampa Electric to  
18 act on any proposal that requires the company to accept  
19 commercial risks regarding the construction and use of a  
20 rail receiving facility. It is well known that Tampa  
21 Electric may have to dramatically reduce or eliminate its  
22 coal use at Big Bend. Under the circumstances, Tampa  
23 Electric prudently avoided the commercial risks related  
24 to the proposal offered by CSXT. The bids provided by  
25 CSXT were treated with all the respect and consideration



1           that they deserved.

2

3   **Q.**   Please comment on Dr. Sansom's assertion that Tampa  
4   Electric should have "synchronized" its coal contracts  
5   and its transportation contracts.

6

7   **A.**   It is neither common nor appropriate in most instances  
8   for a coal receiving utility to enter into coal  
9   transportation contracts and coal supplies at the same  
10   time. The market conditions affecting transportation  
11   costs are often not tied to the market conditions  
12   affecting coal supply, and by handling these separately,  
13   there can be an advantage in going to market for either  
14   coal or transportation when it favors the lowest  
15   delivered coal costs. In my experience, I have seen  
16   unsynchronized coal and transportation contracts from  
17   large companies, including the Tennessee Valley  
18   Authority, Consumers Power Company and American Electric  
19   Power. In my own experience, coal transportation  
20   contracts at Florida Power Corporation were not  
21   synchronized with coal supply contracts. This did not  
22   create any difficulties at Florida Power. Additionally,  
23   when I coordinated the coal procurement activities of  
24   United Illuminating in 1999 as a consultant, the  
25   transportation contract terms were not synchronized with

1 the coal supply contracts.

2

3 Q. Dr. Sansom spends a significant portion of his testimony  
4 asserting Tampa Electric should have terminated and/or  
5 modified its coal supplies. Does CSXT directly serve  
6 mines which have coal that would be attractive to Tampa  
7 Electric for its Big Bend Station?

8

9 A. While CSXT has some coal mines on its CSXT lines that can  
10 provide coal for Big Bend, a preponderance of the coal  
11 located on CSXT lines exhibit ash with high fusion  
12 temperature. As I stated above, most of the coal sourced  
13 by Tampa Electric must have low fusion temperature  
14 characteristics because Big Bend Units 1, 2 and 3 are wet  
15 bottom boilers that require low ash coal for the boiler  
16 to operate properly.

17

18 For that reason, much of the coal currently purchased by  
19 Tampa Electric today is located on a rail carrier other  
20 than CSXT or has no rail service at all. Therefore, much  
21 of the coal that Tampa Electric requires would either  
22 have to be sourced in a two or three line rail haul (that  
23 is, where two or three different railroads handle the  
24 coal cars from origin to destination) or the coal would  
25 have to be trucked or barged to a rail transloading

1 facility for loading into railcars. These short-haul  
2 transportation costs must be considered when evaluating  
3 the proposal made by CSXT for rail delivery service.  
4

5 **Q.** Is CSXT capable of delivering petcoke to Tampa Electric's  
6 power plants?  
7

8 **A.** No. So far as I know, CSXT does not originate any  
9 petcoke on its system. The petcoke currently used by  
10 Tampa Electric is sourced from the Lake Charles,  
11 Louisiana area and the Texas Gulfcoast, and those sources  
12 are entirely water-served. CSXT would not be capable of  
13 going to the source of that petcoke and most other  
14 petcoke available in the United States to have its  
15 railcars loaded for delivery to Tampa Electric.  
16 Additionally, the offshore petcoke that is available from  
17 Aruba, Venezuela and elsewhere must be delivered to the  
18 United States by ocean vessel.  
19

20 **Q.** Do you agree with Dr. Sansom that there is a two percent  
21 BTU loss for coal that is transloaded for barge shipment  
22 due to multiple handling?  
23

24 **A.** No, I do not. Moreover, the coal pile adjustments  
25 recorded by Tampa Electric do not support Dr. Sansom's

1           contention, either. Looking at the coal pile inventories  
2           for both TECO Bulk Terminal and Big Bend Power Station,  
3           there is no evidence that any appreciable amount of coal  
4           has been lost to the transloading of coal over time.

5  
6   **Q.**   Do you agree with Dr. Sansom that there is 25 cents per  
7           ton loss in the heating value of the coal that is carried  
8           on barges, due to moisture increase during transit?

9  
10   **A.**   No, I do not. My experience has been that the only  
11           negative related to moisture increase for waterborne coal  
12           is that there is a small increase in the final leg of the  
13           transportation cycle - the gulf barge portion. If you  
14           assume that the gulf water barge portion of the rate is  
15           approximately [REDACTED] per ton, then the probable impact of  
16           moisture increase would be less than [REDACTED] cents per ton,  
17           not the 25 cents per ton attributed to this by Dr.  
18           Sansom.

19  
20   **Q.**   Are Tampa Electric's waterborne coal transportation costs  
21           reasonable based upon its contract with TECO Transport  
22           for 2004 through 2008?

23  
24   **A.**   Yes, the costs contained in Tampa Electric's contract  
25           with TECO Transport are reasonable costs. The costs

1 reflect the market for transportation services as further  
2 supported in the testimony of Ms. Wehle and Mr. Dibner.  
3 This is especially true in light of the recent  
4 substantial increase in the ocean freight market. The  
5 costs are below the level for ocean freight that would  
6 likely be established today if Tampa Electric were to go  
7 out onto the market for transportation services. The cost  
8 of some ocean transportation movements are double and  
9 sometimes triple the level they were in the summer of  
10 2003.

11  
12 In addition to costs, there is the issue of dependability  
13 that must be addressed. One of the very real assets of  
14 the Tampa Electric's delivery system is that it is  
15 comprised of a reliable and economically sound entity.  
16 The non-price value of this reliable and efficient  
17 transportation system is significant.

18  
19 The coal industry trade press is replete with examples of  
20 poor rail service in recent months, where coal-burning  
21 utilities are facing coal shortages as a result of  
22 locomotives and railcars being pulled away from utility  
23 service to work in the more lucrative export coal  
24 business that the railroads favor. The railroads often  
25 make more money in the export trade than in domestic

1 service, and this causes them to deploy their rolling  
2 stock in such a manner as to reduce service to their  
3 utility customers. Ms. Wehle addresses CSXT service  
4 issues in her rebuttal testimony.

5  
6 **Q.** You say that the cost of some ocean transportation  
7 movements are double and sometimes triple the levels they  
8 were in the summer of 2003. Can you explain what has  
9 recently happened to the ocean freight market?

10  
11 **A.** Yes. Ocean freight markets around the world have  
12 experienced a significant run-up in the past several  
13 months, due mostly to a revived economy in China, where  
14 demand for steel-making materials has resulted in a  
15 shortage of vessels around the world. While that market  
16 is not one that would normally be addressed by TECO  
17 Transport's vessels, the increase in freight rates has  
18 been experienced in virtually every shipping basin,  
19 including the US Gulf of Mexico and the Caribbean.

20  
21 As an example, freight rates for hot briquette iron from  
22 Venezuela to the US Gulf (New Orleans) have increased  
23 from a pre-run-up level of \$10 per metric tonne, to a  
24 current level of around \$30 per metric tonne. Similarly,  
25 Jepsens USA reports that grain transportation rates from

1 the US Gulf to Venezuela, Colombia and the Dominican  
2 Republic have gone from \$14 per tonne in February of 2003  
3 to \$34 per tonne in March of 2004. Time charter rates in  
4 the same period in the US Gulf and Caribbean have  
5 increased from \$7,500 per working day to \$32,000 per day.

6  
7 In the area of coal transportation, the shipping company  
8 Navios reports that coal haulage rates from Colombia and  
9 Venezuela have gone from about \$6.50 per tonne in  
10 February, 2003 to nearly \$20 per tonne today. The rate  
11 for moving coal to Jacksonville Electric Authority from  
12 Colombia, South America, has increased from a low of \$4  
13 per tonne to a current spot rate of \$14 per tonne.  
14 Finally, while Panamax day rates for an annual charter  
15 were as low as \$12,200 per day in January of 2003, they  
16 are now as high as \$46,000 per day.

17  
18 As can be seen from these dramatic increases in freight  
19 rates around the Gulf of Mexico and Caribbean, the cost  
20 of shipping has increased significantly over the past  
21 several months. If TECO Transport were to move to a  
22 market price today, the rate would probably be  
23 considerably higher than the level agreed to in the  
24 contract with Tampa Electric. Against this backdrop  
25 Tampa Electric is paying lower rates under its new

1 contract with TECO Transport than it was under the  
2 contract it replaced. Furthermore, Tampa Electric's  
3 customers clearly are the beneficiaries of the timing of  
4 the new contract between Tampa Electric and TECO  
5 Transport.  
6

7 **MODIFICATION OR ELIMINATION OF THE CURRENT BENCHMARK?**

8 **Q.** Should the FPSC modify or eliminate the waterborne coal  
9 transportation benchmark?  
10

11 **A.** No. In my opinion the system in place and the benchmark  
12 for waterborne coal transportation costs are working  
13 well. The fundamental conditions that are in place today  
14 are not substantially different from those present in the  
15 1988 time frame, when the Commission carefully considered  
16 and adopted the current benchmark for waterborne coal  
17 transportation costs. For these reasons, I see no reason  
18 why the Commission should change its policy regarding the  
19 benchmark at this time.  
20

21 **Q.** Is the benchmark accomplishing its purpose?  
22

23 **A.** Yes. Based upon my reading of the order in which the  
24 benchmark was established, the purpose of the benchmark  
25 was to provide an effective ceiling for the amount that



1 could be charged by TECO Transport for waterborne coal  
2 transportation services. The benchmark was based on a  
3 measurable and logically-based parameter, which was the  
4 rail cost per ton-mile incurred by other Florida-based  
5 coal users. The benchmark has worked well over the years,  
6 and in each instance the amount charged by TECO Transport  
7 for waterborne coal transportation services has been  
8 below the level that would otherwise be allowed by the  
9 benchmark. The logical conclusion from reviewing the  
10 facts regarding the benchmark and the prices charged by  
11 TECO Transport to Tampa Electric is that the benchmark  
12 has worked well and continues to work well.

13  
14 **Q.** Have circumstances changed that warrant a change in the  
15 benchmark methodology?

16  
17 **A.** No, they have not. So far as I can tell by comparing the  
18 overall markets affecting coal transportation in the  
19 United States at the time the benchmark was established  
20 and today, there does not appear to be any substantial  
21 change in the market that would warrant changing in the  
22 established process. I have not seen any testimony that  
23 outlines any substantial change in the industry or market  
24 to support such a modification. As pointed out by Ms.  
25 Wehle, the prices currently charged by TECO Transport to

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25

Tampa Electric bear nearly the same relationship with the benchmark that they did when the benchmark was first established several years ago.

**Q.** Does this conclude your testimony?

**A.** Yes, it does.

EXHIBIT NO: \_\_\_\_\_  
TAMPA ELECTRIC COMPANY  
DOCKET NO. 031033-EI  
(FJM-1)  
FILED: MAY 3, 2004  
DOCUMENT NO. 1

EXHIBIT TO THE  
REBUTTAL TESTIMONY  
OF  
FREDERICK J. MURRELL

DOCUMENT NO. 1

"RESUME"

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**Experience:**

President – Frederick J. Murrell, Professional Association, a law firm specializing in coal procurement and coal transportation matters. *1987 to present.*

President – Adaro Envirocoal Americas, represents the coal production of PT Adaro Indonesia, the producer of the low sulfur coal called “Envirocoal”. Adaro Envirocoal Americas is responsible for the sale of that coal into North, Central and South America, parts of the Philippines and a power plant in Indonesia. *1992 to present.*

Vice President – CSX Transportation, Inc, C & O Railroad, Seaboard Railroad System, responsible for running southeast office of CSX Transportation coal department with \$800 M in revenues. *1984 to 1986.*

Vice President – Coal Operations, Electric Fuels Corporation, a division of Florida Power Corporation, responsible for all coal procurement and coal transportation functions *1981 to 1984.*

Corporate Counsel, Florida Power Corporation, assigned to Electric Fuels Corporation regarding coal procurement and transportation for coal-fired power plants. *1979 to 1981.*

**Education:**

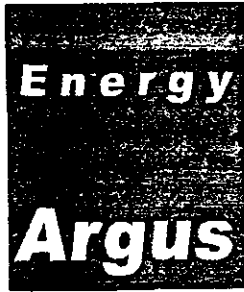
Juris Doctor (with Honors) – University of Florida, 1976  
Bachelor of Science, Economics, Florida State University, 1972

EXHIBIT NO. \_\_\_\_\_  
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EXHIBIT TO THE  
REBUTTAL TESTIMONY  
OF  
FREDERICK J. MURRELL

DOCUMENT NO. 2

"ARTICLES ABOUT CSXT RATE INCREASES"



# COAL daily

D A I L Y The Daily Briefing on Coal Business Vol. 8 No. 80 April 28, 2004

### Executive Briefing

- The increase in SO<sub>2</sub> allowance prices might be complicating utilities' scrubber plans.
- PRB/Central App Coal Daily Indices.
- CSX warned that service improvements are months away.
- Several senators are criticizing FutureGen funding.
- The OTC market slipped today.
- OTC Update.
- OTC Broker Index.
- BNSF said pricing changes are needed to keep up with coal market changes.
- Daily Stock Price Update.
- Spark Spread Comparison.

## Coal Market Changes Could Complicate Scrubber Plans

Increasing costs for SO<sub>2</sub> allowances have begun to make scrubber installations more attractive to utilities evaluating the marginal cost of complying with the Acid Rain program, analysts say, but shifting coal prices and coal market fundamentals have complicated that decision for some utilities.

SO<sub>2</sub> prices moved as high as \$284/ton as of Monday, nearing the \$300/ton level that is widely considered to be the point at which installing a scrubber becomes more effective than purchasing SO<sub>2</sub> emissions credits to cover a coal burn. Those utilities that did not choose to install scrubbers have instead been able to rely on the use of very

low-sulfur Central Appalachian "compliance product" with an SO<sub>2</sub> content of less than 1.2 lbs/mmBtu.

Recent high prices for low-sulfur "compliance" coals, however, have made the situation even more pressing for coal-burning utilities, which have been caught in the position to pay significantly more for coal or significantly more for SO<sub>2</sub> allowances than they would have a few years ago. Concerns about availability of Central Appalachian reserves over the long term and competition from competing coal supply regions with differing sulfur levels have also encouraged utilities to take a new look at how coal markets will impact their decisions to install a scrubber.

Although prices vary, the price floor for compliance coal from Central Appalachia has risen since the 2000 initiation of phase two of the acid rain program, which  
*(continued on next page)*

### Central App/PRB Coal Daily Indices

Date: April 28, 2004

NYMEX - spec:		Low	High	Best Est.
Prompt Month:	May '04	\$50.00	\$51.75	\$51.00
Prompt Month+1:	June '04	50.00	52.00	51.00
Prompt Quarter:	Q3 '04	51.00	52.50	51.75
Prompt Quarter+1:	Q4 '04	51.75	53.00	52.50
Prompt Quarter+2:	Q1 '05	49.25	50.75	50.00
PRB \$ 400 Btu/lb.:		Low	High	Best Est.
Prompt Quarter:	Q3 '04	5.00	5.40	5.20
Prompt Quarter+1:	Q4 '04	5.80	6.40	6.15
Prompt Quarter+2:	Q1 '05	6.00	6.60	6.30
PRB \$ 500 Btu/lb.:		Low	High	Best Est.
Prompt Quarter:	Q3 '04	5.95	6.40	6.20
Prompt Quarter+1:	Q4 '04	6.70	7.40	7.00
Prompt Quarter+2:	Q1 '05	7.10	7.50	7.30

## CSX: Improvements To Service Still Months Away

Eastern rail carrier CSX was able to post strong growth in its coal business during the first quarter of the year, with 9.1 pct volume growth in the segment, but officials there say that they are still several quarters away from seeing significant improvements in overall operating performance.

CSX's coal group saw 10.2-pct revenue growth for the quarter, on volume of 42.7 million tons. This growth was primarily due to strength in export, river and southern utilities markets, the company said.

Coal revenues totaled \$422 million in the quarter, compared to \$383 million in the first quarter of 2003. Coal carloads increased to 420,000 in the quarter, compared to 385,000 in Q1 2003.

Of the 42.7 million tons of coal moved by CSX, 39.4 million tons was domestic. The 3.3 million tons of export  
*(continued on p.4)*

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clean coal projects, Garman said. Although Garman conceded in response to a question by Bunning that no programs have been planned for FutureGen, he said if DOE is able to successfully design, develop and demonstrate a plant with nearly zero emissions, "we will have made a tremendous effort in stabilizing greenhouse gas emissions."

Borrowing Bunning's "long bomb" term, Sen. Jeff Bingaman (D-N.M.), ranking member on the committee, said the Bush administration's is "putting all its eggs in one basket" of the hydrogen economy that will not show any benefits until 2015 or 2020, at the earliest. There have been reports that a hydrogen economy is 50 years off. He noted that DOE's request for hydrogen research-related programs was up 43 pct, while request for other energy research and development activities, such as fossil fuels and renewables, show a "remarkable decline." Bingaman urged committee Chairman Pete Domenici (R-N.M.) to ask for an analysis of DOE's research and development priorities.

Frank Burke, CONSOL Energy vice president for research and development, agreed with Garman that the industry sees FutureGen as an important strategic component of clean-coal technologies. However, he criticized DOE's decision to underfund

clean coal programs, adding that "FutureGen will be one technology ... it is necessary to develop in parallel other clean coal technologies."

He noted that the DOE together with the Electric Power Research Institute and a consortium of private industries have developed a clean-coal technology roadmap, but the department's fiscal year 2005 request is half of what is needed to meet the roadmap goals. These goals include research and development as well as commercial testing at pilot and utility-scale of gasification, advanced combustion, turbines and carbon sequestration techniques. "We will not achieve these goals in that specific timeframe," Burke said.

This is the second time in the past two months that Garman has had to defend DOE's decision to allocate more dollars to FutureGen than to ongoing clean-coal projects. Last month, Rep. Vernon Ehlers (R-Mich.) at a House Science Committee's Energy Subcommittee hearing noted that DOE planned to spend only \$18 million this year on FutureGen related work, even though it had requested \$237 million (AD 3/24/04).

DOE initially agreed to fund 80 pct of the \$1 billion project, while an international private consortium of coal and electric power companies is expected to fund the rest. One such

Daily Stock Price Update			
4/28/2004	Close	Chng	Volume
Alliance	41.40	0.70	172,131
Arch	31.50	-1.39	1,040,300
CONSOL	29.48	-1.30	1,286,300
Massey	24.20	-2.07	1,099,500
NRP*	37.65	-0.41	81,700
Peabody	48.72	-1.45	1,461,000
PVR*	34.65	0.02	22,000
Westmoreland	20.37	-0.38	28,400
*Penn Virginia Resource Partners (PVR) and Natural Resource Partners (NRP)			
By the Numbers			
4/28/2004	Last	Chng	Pct Chng
US\$ vs. Aus\$	1.384	0.000	-0.02%
US\$ vs. Can\$	1.375	0.000	-0.01%
US\$ vs. Euro	0.845	0.000	0.00%

consortium, FutureGen Alliance, which includes utility giant Southern Co. and CONSOL, has formally solicited an interest in partnering with DOE and footing the \$200 million share. However, Burke told *Argus* that no such agreement has been signed, as DOE wants to renegotiate the terms of its cost-sharing agreement from an 80 pct share to a 60 pct share.

"We are willing to negotiate with DOE over numbers," Burke said, but cost-sharing on a 50-50 basis would be out of the question.

**CSX cont. ...**

shipments was a 50-pct increase over Q1 2003 export levels. The carrier reported that the strength in its coal export business "resulted from continued high European steam coal demand and increased demand from Asia. Pricing and modal conversions also contributed to gains."

All lines of CSX's coal business experienced favorable year-over-year gains except northern utilities. Officials also said that with southern utility stockpiles still below target levels, growth for coal was expected throughout the year, although perhaps not at the 10-pct level seen during this quarter.

Despite volume gains, major operational issues affecting coal shippers - and all shippers - still remain. Service issues ended up drastically increasing the carrier's costs, and were partially responsible for CSX's earnings dropping year over year. Earnings were down 70 pct year on year; however, the 2003 period included a substantial net gain of \$214 million in cash and \$60 million in securities from the sale of the firm's container business.

CSX's president and CEO, Mike Ward, said in today's conference call that he "was not satisfied with our numbers, with our performance, and our progress." The carrier is in the

early stages of implementing a new operating system, being overseen its new chief operating officer Tony Ingram, who was hired away from competitor Norfolk Southern (NS) last month.

Ingram said that while smaller changes are already taking place, the main thrust of the operating plan will begin this summer, and completed before the carrier's busy season begins in September. Major improvements to operations likely won't be seen until late 2004 and early 2005, he said.

In terms of coal pricing, the trio of Eastern rate cases recently decided at the Surface Transportation Board

*(continued on next page)*

appears to have thus far had a larger impact on NS, which was involved in the two cases that involved the most coal tonnage.

Due to the pro-carrier decisions at the STB, NS last quarter was able to recognize Duke Energy and Carolina Power & Light coal revenues - two of its larger coal contracts - at rate levels that are estimated to be 50 pct higher than prior rates.

In addition, NS was also able to boost yields on its other coal business by about 4.6 pct during the last quarter, in part because of the STB case rulings. Analysts believe the recent STB decisions will drive 15 pct to 20 pct price increases for captive NS customers as contracts are renegotiated.

CSX officials appeared less inclined to use the decisions to drive price increases, although officials noted that they were getting "attractive" increases in the contracts they renegotiated last quarter. More of CSX's coal pricing strategies should become known after the second quarter, as a large percentage of the coal contracts it has that are coming up for renegotiation in 2004 will be done during Q2.

### **BNSF: Strong Coal Growth But Pricing Limits Gains**

A record-breaking quarter for coal movements has left Burlington Northern Santa Fe (BNSF) executives pleased about the commodity group's performance, but they stressed that changes in pricing and contracts terms are needed to keep their coal-transportation profits in line with market forces.

BNSF reported Tuesday that its coal division earned \$520 million in revenues for the first quarter of 2004, which was up \$35 million, or 7.2 pct, over Q1 2003 levels. About half that growth was directly related to two large contracts that have recently begun, including a massive Georgia Power deal, while the rest of the growth was organic, officials said.

The carrier moved 60 million tons of coal during the first quarter of

2004, which is a Q1 record for the Fort Worth, Texas-based company. Overall, coal comprised 21 pct of BNSF's total \$2.4 billion in revenues during the latest quarter.

One trouble spot for the carrier was a 4.3 pct decrease in revenue per ton-miles for coal during the quarter. This was in large part because of the long distances Powder River Basin coal travels in BNSF's new deal with Georgia Power for deliveries to its Scherer plant facility. The Scherer deal helped increase the average haul length for a BNSF coal movement by 4.5 pct, officials said.

Also, on a year-over-year basis, prices charged for coal shipments only increased 1 pct over Q1 2003 levels, compared to the 2 pct average seen for the entire company.

In part because of the relatively small increase of coal transportation prices over the past year, officials said during their conference call with analysts that they would attempt to get more traction with the public pricing mechanism that they first announced early in 2003.

Union Pacific (UP) last month announced a similar, "non-confidential," pricing program, and analysts believe that if the two Western carriers stick with their respective plans, pricing for coal moves - to both competitive and captive plants - could increase substantially in the next few years.

Like UP, BNSF "believe[s] public pricing is part of our future as well," said John Lanigan, BNSF's chief marketing officer.

"We still have public pricing in place, and are moving ahead with that mechanism," Lanigan said. BNSF never abandoned the model, even though the carrier had some disappointing results using the pricing mechanism for contract negotiations last year, he said.

Both confidential and public pricing-based contract negotiations will continue, and the decision on which method to use will be dictated by customer needs, Lanigan said. "We clearly would like to move forward on

public pricing on a larger basis. [but] there are certain situations where [confidentially-negotiated] contracts are appropriate as well."

More importantly than whether a coal transportation contract is negotiated through public or confidential methods is the fact that long-term coal hauling contracts need to be phased out, said Matt Rose, BNSF president and CEO. Similarly, UP's new pricing program, which is now being rolled out for select number of Southern PRB moves, puts a three-year limit on contracts.

"We don't want to be in long-term contracts, we want our services to reflect what the market conditions are," Rose said. "As coal becomes an inherently more valuable resource ... we want to be able to realize that value. You can't do that in long-term contracts."

Lanigan noted that the number of test burns of PRB coal at eastern utilities had increased during the quarter, a potential area of growth for BNSF coal, although he noted that this quarter's increase wasn't a dramatic one.

A limited number of export shipments also began during the quarter, officials noted. BNSF was involved in moving at least one shipment of Montana PRB coal to Westshore Terminals in Vancouver for sale to Pacific Rim customers. BNSF and Westshore have both stressed the possibility of more PRB exports to Asia and South America as a possible avenue of growth for the railroad.

Even though utilities have noted some problems in getting some PRB coal deliveries, BNSF officials noted during the conference call that the carrier was able to handle 97 pct of the coal forecast by the National Coal Transportation Association (NCTA) during the first quarter. For April, BNSF moved 98.5 pct of NCTA forecasts.

Based on internal metrics, BNSF's coal shipments were delivered on time 98.5 pct during the quarter, well above the 86.7 pct on-time average seen for the entire rail system.



**Energy**  
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# COAL TRANSPORTATION

**REPORT**

BIWEEKLY Special Issue      www.energyargus.com      November 10, 2003

## Big Win For NS In Duke Energy Rate Case

The ability of Eastern-based captive coal shippers to get significant rate relief from the Surface Transportation Board (STB) appears to have taken big hit, with a decidedly pro-railroad decision in the Duke Energy-Norfolk Southern (NS) case.

STB watchers were still pouring through the lengthy decision, issued Nov. 6, as *COAL Transportation Report* went to press. Still, the early verdict does not appear particularly favorable for the utility, which also is in the process of contesting certain coal-transportation rates with CSX at the railroad regulatory agency.

The bulk of Duke's case was apparently mortally wounded when the STB agency flatly rejected the utility's stand-alone railroad model (SARR), calling it "unworkable."

As a result, the STB used NS's SARR model, and eventually found that the NS rates challenged by Duke had not been shown to be unreasonable under the board's standard stand-alone cost (SAC) test.

From a basic standpoint, this would appear to be a big win for NS. Analysts had speculated that the Class I would still have benefited from any rate reduction ordered by the STB of up to 15 pct.

### Phased Rates May Be One Alternative

However, in what might be an important issue going forward, STB Chairman Roger Nober said that the agency had "expressed concern over the size of the rate increases involved and stated that, if Duke wishes to pursue the matter further, the Board would look at whether NS should be required to phase in [its rate increases] over some period of time."

The "rate phasing" issue is a unique angle not brought up before in these cases and could potentially bring some relief to the utility over the next few years.

Duke has 30 days to respond to this issue, if it chooses. The utility also has 60 days to file a petition for reconsideration with the STB, or it could take the matter directly to the Court of Appeals.

"Under the Staggers Rail Act of 1980, railroads were given

considerable freedom to employ demand-based differential pricing provided that such rates were reasonable, and in this case, under the SAC analysis the rates charged were reasonable," the STB said in its decision.

"However, the Board may review the rates charged to 'captive' shippers (i.e., those over whom a railroad has 'market dominance') in a number of different ways, and questions whether the shipper in this instance should have to incur rate increases of the magnitude imposed here so abruptly," the board said.

**CTR Breaking  
News  
Supplement**

As a result, the STB "will afford the parties an opportunity to address whether the magnitude of the rate increases at issue here violated the Board's phasing constraint and, if so, what method should be used for phasing in these rate increases over time," the decision said.

NS officials released a statement late Thursday saying it would "comment further after it has had an opportunity to review the decision, including the invitation the Board extended to Duke Energy to invoke, if Duke Energy so chooses, the phase-in constraints of the Constrained Market Pricing Guidelines."

Lawyers representing Duke Energy could not be immediately reached for comment.

### New Rates Nearly 50 Pct Higher

Duke had challenged NS's rates for the movement of coal from origins in Virginia, West Virginia and Kentucky to Duke's Allen, Belews Creek, Buck and Dan River electricity generating facilities in North Carolina.

In STB filings, the utility had claimed that certain NS common carrier rates to its plants were more than 400 pct above the railroad's variable service costs — well above the STB's 180-pct threshold.

*(continued on next page)*

**Duke-NS...from page 1**

The common carrier rates that NS charged were offered after contract renegotiations between the carrier and utility stalled. The last of Duke's rail contracts with NS expired at the end of 2001.

NS provided rates from loading points in Kentucky, West Virginia, Virginia and South Carolina (the Shipyard River Terminal) to the plants. Rates from these origins to the Allen plant ranged from \$16.00-18.61/ton. Rates to Belews Creek ranged from \$16.45-19.91/ton. Rates to Buck ran \$16.55-18.61/ton and to Dan River ran \$17.00-21.01/ton.

It has been estimated that the tariff prices that NS is currently employing are nearly 50-pct higher than the previous contract rates it had with Duke.

**First 'Modern' Eastern Case**

The Duke-NS case had drawn much interest because it was "the first modern SAC case east of the Mississippi River," the STB noted.

["A favorable ruling would bode well for future rate increases from CSX and NS while an unfavorable ruling could put a lid on rate increases and also cause a flood of additional rate cases against NS and CSX," Bear Stearns analyst Tom Wadewitz said a recent research report.]

In addition to the ongoing Duke-CSX case, the only eastern rate case on the STB's docket, out of the roughly dozen outstanding cases, is the Carolina Power & Light-NS proceeding.

Oral arguments in the Carolina Power-NS case are slated for Nov. 19, and a decision

*In "this case, under the SAC analysis the rates charged were reasonable."*

**— STB decision**

is expected by late December. A Duke-CSX decision is due in February 2004. Chairman Nober cautioned STB followers on Friday afternoon to wait until the other two eastern cases are decided before jumping to any conclusions about what the cases' impact on eastern rates could be.

While the three eastern cases are similar in many respects, it should not be assumed that each decision will go the same route, Nober told Wall Street analysts. "Past performance is not indicative of future results," he said.

In theory, Eastern utilities have generally

shied away from rate cases because their SARR models are far more expensive than those for their Western counterparts, effectively ending any chance of winning cases. In this case, the theory proved to be correct.

"The relative expense to build transportation projects in the mountainous areas of the Eastern United States compared to projects located primarily in less mountainous areas of the West may have been a factor in this case," noted Nober in the decision. "It may well be that it is more expensive to build in this part of the East, and the question of whether Duke could have presented a case that could overcome the expense inherent in building in this part of the country cannot be determined."

"However, in certain areas of the SAC presentation in this case, a more robust record could have been developed," the decision said.

It has been estimated that there are only about 75 utilities that have the means to utilize the STB's large-rate case procedures in the United States, a figure cited by proponents of rail competition reform as a clear reason to make the board's rules more inclusive.


If eastern utilities are denied real opportunity to file cases, that number will soon be much smaller, sources said.

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**Coal Transportation Report**

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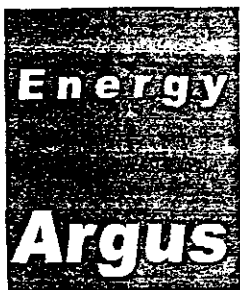
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# COAL Daily

DAILY The Daily Briefing on Coal Business Vol. 7 No. 216 Nov. 7, 2003

## Executive Briefing

- NS emerges uncertain victor in Duke rate case.
- PRB/Central App Coal Daily Indices.
- Southern Co. bought 2004 coal for Georgia Power.
- Horizon is seeking to extend its reorganization plan deadline into December.
- A Peabody-AEP contract dispute is headed to trial.
- Jim Walter Resources suffered from high costs in Q3'03.
- OTC Update.
- OTC Broker Index.
- Daily Stock Price Update.
- Spark Spread Comparison.

## STB: NS Rates For Duke Not Unreasonable

The ability of eastern-based captive shippers, particularly coal utilities, to get significant rate relief from the Surface Transportation Board (STB) appears to have taken a blow, with yesterday's decision in the Duke Energy-Norfolk Southern (NS) case.

STB watchers were still pouring through the lengthy decision as Coal Daily went to press, although the early verdict did not appear favorable for the utility, which is also in the process of contesting another coal-transportation contract with CSX at the railroad regulatory agency.

The bulk of Duke's case was apparently mortally wounded when the STB agency flatly rejected the utility's

stand-alone railroad model (SARR), calling it "unworkable." As a result, the STB used NS's SARR model, and eventually ruled that the NS rates challenged by Duke had not been shown to be unreasonable under the board's standard stand-alone cost (SAC) test.

From a basic standpoint, this would appear to be a big win for NS. Analysts had speculated that the Class I would still have benefited from any rate reduction ordered by the STB of up to 15 pct.

However, in what might be an important issue going forward, STB chairman Roger Nober said that the agency had "expressed concern over the size of the rate increases involved and stated that, if Duke wishes to pursue the matter further, the Board would look at whether NS should be required to phase in [its rate increases] over some period of time."

The "rate phasing" issue is a unique angle not often brought up in cases, sources note, and it could potentially bring some relief to the utility over the next few years, if that avenue is pursued.

*(continued on next page)*

## Central App/PRB Coal Daily Indices

Date: November 7, 2003

NYMEX - spec:		Low	High	Best Est.
Prompt Month:	Dec '03	\$34.75	\$35.50	\$35.25
Prompt Month+1:	Jan '04	34.75	35.50	35.25
Prompt Quarter:	Q1 '04	35.00	36.25	35.85
Prompt Quarter+1:	Q2 '04	35.50	36.25	35.95
Prompt Quarter+2:	Q3 '04	35.75	36.50	36.10
PRB 8,400 Btu/lb.:		Low	High	Best Est.
Prompt Quarter:	Q1 '04	5.30	5.65	5.45
Prompt Quarter+1:	Q2 '04	5.30	5.75	5.55
Prompt Quarter+2:	Q3 '04	5.40	5.80	5.65
PRB 8,800 Btu/lb.:		Low	High	Best Est.
Prompt Quarter:	Q1 '04	6.40	7.00	6.55
Prompt Quarter+1:	Q2 '04	6.50	7.10	6.75
Prompt Quarter+2:	Q3 '04	6.60	7.25	6.85

## Georgia Power Buys NS-Delivery '04 Coal

Southern Co.'s Georgia Power subsidiary has purchased 500,000 tons for delivery to its Norfolk Southern-served plants in 2004.

Based on bids due Aug. 27, Georgia Power bought coal from a single supplier for delivery to Hammond, Wansley and Yates.

Details weren't released but traditionally, coal for Hammond and Yates should, on an as received basis, have a minimum 12,000 Btu/lb. and maximums of 3 pct sulfur, 12 pct moisture and 12 pct ash. Coal for Wansley should have a minimum 12,000 Btu/lb. and maximums of 3 pct sulfur, 8 pct moisture and 12 pct ash.

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"Under the *Staggers Rail Act of 1980*, railroads were given considerable freedom to employ demand-based differential pricing provided that such rates were reasonable, and in this case, under the SAC analysis the rates charged were reasonable," the STB said in its decision. "However, the Board may review the rates charged to 'captive' shippers in a number of different ways, and questions whether the shipper in this instance should have to incur rate increases of the magnitude imposed here so abruptly."

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Lawyers representing Duke Energy could not be immediately reached for comment.

**Briefs**

**Horizon Poised For Another Deadline Extension**

Although nearly a year has passed since Horizon Natural Resources filed for bankruptcy, the company has yet to file its plan of reorganization.

Since filing for Chapter 11 protection on Nov. 14, 2002, Horizon has received three extensions from its bankruptcy court to the deadline for submitting its reorganization plan. Horizon was initially supposed to file the plan on March 13, 2003, but the deadline was extended to May 13. The company then received two other deadline extensions from the court, neither of which was met.

The latest deadline was supposed to be yesterday (Nov. 6), but Horizon requested, and will likely receive, an extension until Dec. 2, 2003. The court held a hearing yesterday afternoon to set a new deadline, but the outcome of that hearing was unavailable at press time.

**Deutsche Bank**, Horizon's primary lender, expressed concern this week about the lack of progress in the proceedings, but acknowledged that Horizon is facing challenges on numerous fronts.

"To be clear, [Deutsche Bank] is not happy that no Plan has yet been proposed," the company said in a Nov. 5 court filing. "DB suspects the Debtors, the Court and all other parties share that feeling. However, the simple fact is that a Plan is not ready."

"In addition to facing the myriad of business issues confronting any reorganizing entity, the Debtors must confront a host of unique environmental and regulatory concerns. This involves extensive and time-consuming analysis of current and future obligations. It has also required the Debtors to hold numerous meeting with, among others, unions, state and federal regulatory agencies, and reclamation bonding companies. In addition, the Debtors have also had extensive contacts with potential investors."

Deutsche Bank told the court that it supported a deadline extension to Dec. 2 to give Horizon sufficient time to develop an "effective and realistic" reorganization plan.

**Peabody-AEP Contract Dispute Headed To Trial**

A long-running contract dispute between Peabody Energy and American Electric Power (AEP) is heading to trial in federal court after the companies were unable to resolve the feud through mediation.

The dispute dates back to late 2001 when Peabody subsidiary Caballo Coal Co. filed a lawsuit against AEP's Indiana Michigan Power Co. (IMPC), alleging that the utility used a "phantom" reopener bid in an attempt

EXHIBIT NO. \_\_\_\_\_  
TAMPA ELECTRIC COMPANY  
DOCKET NO. 031033-EI  
(FJM-1)  
FILED: MAY 3, 2004  
DOCUMENT NO. 3

EXHIBIT TO THE  
REBUTTAL TESTIMONY  
OF  
FREDERICK J. MURRELL

DOCUMENT NO. 3

"COMPARISON OF RAIL AND WATERBORNE ADJUSTMENT FACTORS"

## ADJUSTMENT FACTOR COMPARISON'S BETWEEN RAIL AND WATERBORNE TRANSPORTATION

	CSXT	TECO Transport
RCAF-U factor adjustment	Yes	N/A
PPI and CPI adjustment	N/A	Yes
Portion of the transportation:	Entire Delivery	River and Gulf Portion
Portion of the costs:	All Costs	Variable Only
Adjustment Used:	RCAF - U	██████████
Five year growth from Q2 1999 to Q2 2004	12.7%	████
Five year change in █████ rate for RCAF-U adjustment and CPI and PPI adjustment	████	████

Results: Starting at the contract price of █████ and adjusting for the RCAF-U in rail, and the CPI and PPI in waterborne, results in rail delivery being █████ higher by the end of the contract term versus TECO Transports waterborne mode of transportation.

- 1) Variable costs represent approximately █████ of river transportation, █████ of gulf transportation, and no terminal variable charge.
- 2) The contract rate is █████, but only the variable component of █████ river @ █████ gulf @ █████) would be subject to escalation.
- 3) The █████ is the effective rate of applying the █████ growth in the PPI and CPI index to the variable component of █████.